

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of

LPTV, TV Translator and FM Broadcast Station Reimbursement)	MB Docket No. 18-214
)	
Expanding the Economic and Innovation Opportunities of)	
Spectrum Through Incentive Auctions)	GN Docket No. 12-268

To: The Commission

PETITION FOR RECONSIDERATION

The National Translator Association (“NTA”) here seeks a limited petition for reconsideration of the Report and Order herein, FCC 19-21 released on March 15, 2019, 83 FR 11233, 03/26/2019. This petition is filed pursuant to Section 405(a) of the Communications Act, 47 U.S.C. §405(a).

We thank the Commission's staff for its diligence in getting this item drafted, adopted and issued under relentless statutory deadline pressure.¹ The Order carefully follows what the Statute directs, and intends to make reimbursement funds available to eligible Low Power Television and TV Translator entities in reasonable time. We offer these comments because the draft, at. Para 95, states reasons for declining to adopt the “Fast Track” approach. The objections to that approach should be addressed and can be overcome easily.

“Fast Track” Proposal. Concerned that the reimbursement process might be overly cumbersome in actual use for rural TV translator operators, NTA in comments suggested an optional “Fast Track” approach for licensees willing to opt for, and abide by, an absolute dollar cap on reimbursement. We suggested the amount of \$31,000, but invited the Commission to consider some

¹ Consolidated Appropriations Act of 2018, Pub. L. No. 115-141, at Division E, Title V, § 511, 132 Stat. 348 (2018) (codified at 47 U.S.C. § 1452(j)-(n)). Referred to in the Report and Order as the “Reimbursement Expansion Act” or “REA.”

other maximum. As stated in our comments at p. 2, “The cap would not entitle the applicant to receive a fixed amount, because actual expenses would still need to be documented.”

The Fast Track proposal grew out of efforts by NTA, cooperatively with the National Association of Broadcasters, to ascertain actual, realistic equipment costs likely to be involved in LPTV and TV Translator re-packing. Our research, in turn, was forwarded to Congress, where it constituted the backbone of the appropriation of \$150,000,000 for non-full-service TV purposes (along with a separate provision for aural services). The central idea of Fast Track was to by-pass the two stage process of submitting cost estimates, and then actual expenses. NTA was then and remains concerned that this multiplicity of paper serves no purpose, but may present a barrier to many rural operators who in any event will be hard pressed to finance the core investment in displaced facilities. Even large urban full service TV stations are finding the application process ornate and daunting.

In declining to follow this approach the Report and Order stated (para 95):

First, it is critical that we obtain an accurate estimate of eligible expenses from all entities requesting reimbursement to ensure that we are not over-allocating for a particular entity and that we have the information regarding the total demand on the Reimbursement Fund.

With due respect, this reasoning is unpersuasive. Supplanting cost estimates by an agreed cap and an actual statement of expenditures is a more accurate estimating and allocating tool than mere estimates, which it replaces for all purposes. In virtually all instances, the aggregate claims of a party under Fast Track will be less than the allowed costs under the Commission's published cost catalog.

In rejecting the Fast Track approach, the Report and Order also states that separate estimates are required by the terms of Section 511(m)(2) of the Act. NTA respectfully disagrees. As noted at para. 94 some stations will have already done their re-build while waiting for the rules to become published and final. “As proposed in the NPRM, these entities may indicate on their Reimbursement Form their actual costs and provide their invoices, instead of providing estimates, for cost already incurred before the Reimbursement Form is filed.” Accepting under Fast Track a dollar cap and actual invoices

without ever having to participate in a regime of estimating does not violate the statute any more than accepting actual costs for previously built facilities. Either way, reimbursement will come only after proven eligibility and proven actual costs.

The remainder of the discussion in para. 95 assumes that the fast track proposal as adopted would exempt applicants from making the certifications in the Eligibility Certification. That is not NTA's position and we do not see how it could be, consistently with the requirements of the statute. The most we have said is that some certifications can be made with a simplified checked-block. Others, as appropriate, will have a checked block and a required supporting exhibit.

To be clear, and contrary to para. 95, NTA's interest is in eliminating the burden of double filings for a single applicant. Otherwise, we are not advocating the exemption of those selecting Fast Track from any of the other information requirements or procedures that each reimbursement applicant must follow. Specifically, applicants will still need to explain what equipment they are replacing and why. Applicants will still need to have expenditures that fall within the amounts in the allowed cost tables. Applicants will still be subject to post-hoc spot checks and audits.

Issues with State and Local Government. The Report and Order decided, and we agree, that stations receiving reimbursement of expenses from other sources and not eligible to receive additional, or replacement reimbursement from the fund, para. 50. An exception was recognized where state and local government have been financing displacements. The Report and Order quotes NTA's comments (at para. 53) "Congress did not intend to penalize states and local governments that maintain translators." However, the Report and Order limits such reimbursement to "translators that are licensed to governmental entities." *Id.* In many cases, notably in the inter-mountain West, State and County governments have stepped up to finance the work of displacement. But the licensee can be a service organization, a club, or a group affiliated with a school or college. State and local government should be able to receive reimbursement in all such cases, and the actual holder of the license should not be

dispositive. Of course, safeguards will be used to assure that reimbursements go to the right place, and that no double counting of the same expense will ever occur.

Many NTA members are local individuals, associations, TV districts, and governments that are representing the local public's desire to have television service and have expended local resources to deliver television translator broadcasting at the request of the citizens they serve. This is "Of the people, by the people and for the people" in action, and it should be preserved. A reimbursement designed to complicate full repayment of forced expenses, in a repack that reduced the available channels to these communities, may exceed the capabilities of a local staff of one or two or three people. The repack has caused these small station people to make exceptional personal commitments far beyond the basic expectations of their job, a commitment that exceeds the financial aid they may request to serve their communities.

Conclusion. Accordingly, NTA respectfully requests that the Commission reconsider its position and that a "Fast Track" option be included in the plan. Many rural translator operators will be unable to participate in this program simply because it is for reimbursement only, and they lack the funds to make the transition in the first place. "Fast Track" is a small but useful step toward simplification, which would expand participation and preserve existing free TV service in the public interest.

Respectfully submitted,

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